

October 12, 2010

Page 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

IN RE:	* Chapter 11
	*
COLONY LODGING, INC.	* Case No. 10-60909
MONTE NIDO ESTATES, LLC	* Case No. 10-60920
ROSSCO HOLDINGS, INC.	* Case No. 10-60953
WM PROPERTIES, LTD.	* Case No. 10-60918
	*
Debtor.	* October 12, 2010

HEARING BEFORE THE HONORABLE CRAIG A. GARGOTTA
BANKRUPTCY JUDGE

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

A P P E A R A N C E S

WINSTON & STRAWN, LLP

By: Mr. David L. Aronoff

333 South Grand Avenue

Los Angeles, California 90071

Appearing for Pacific Mercantile Bank;

WINSTON & STRAWN, LLP

By: Mr. Steven D. Atlee

333 South Grand Avenue

Los Angeles, California 90071

Appearing for Pacific Mercantile Bank;

ANDREWS KURTH

By: Ms. Monica S. Blacker

1717 Main Street, Suite 3700

Dallas, Texas 75201

Appearing for OneWest Bank;

OFFICE OF THE UNITED STATES TRUSTEE

By: Mr. Henry G. Hobbs, Jr.

903 San Jacinto, Suite 230

Austin, Texas 78701

Appearing for the United States Trustee;

BEARD KULTGEN BROPHY BOSTWICK DICKSON & SQUIRES, LLP

By: Mr. Larry E. Kelly

5400 Bosque Boulevard

Central Tower, Suite 301

Waco, Texas 76710

Appearing for Leonard Ross;

KELLY HART & HALLMAN, LLP

By: Mr. Michael A. McConnell

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Appearing for the Debtor;

WINSTON & STRAWN, LLP

By: Mr. Justin E. Rawlins

333 South Grand Avenue

Los Angeles, California 90071

Appearing for Pacific Mercantile Bank;

LOCKE LORD BISSELL & LIDDELL, LLP

By: Mr. Travis Lee Richins

2200 Ross Avenue, Suite 2200

Dallas, Texas 75201

Appearing for National Guardian Life Insurance Company;

1 WINSTON & STRAWN, LLP
By: Mr. Saul S. Rostamian
2 333 South Grand Avenue
Los Angeles, California 90071
3 Appearing for Pacific Mercantile Bank;
4 MUNSCH HARDT KOPF AND HARR, P.C.
By: Ms. Patricia B. Tomasco
5 401 Congress Avenue, Suite 3050
Austin, Texas 78701
6 Appearing for Pacific Mercantile Bank;
7 OFFICE OF THE UNITED STATES TRUSTEE
By: Ms. Valerie Wenger
8 903 San Jacinto, Suite 230
Austin, Texas 78701
9 Appearing for the United States Trustee.

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1 COURTROOM DEPUTY: All rise.

2 THE COURT: Good morning, ladies and
3 gentlemen. Please be seated.

4 All right. We've got -- I apologize. This is
5 normally not my courtroom, but Judge Mott is hearing
6 the Chapter 13 docket today, so that's why we're in
7 here.

8 All right. We have a number of matters set on
9 our docket this morning. Bear with me for one minute,
10 please. Let's see, we've got -- I'm going to just
11 read them all off, and then I'll take announcements.

12 The first matter that we've got is Case Number
13 10-60909, Colony Lodging, Inc. The second matter is
14 Case Number 10-60918, WM Properties, Limited. The
15 next matter is Case Number 10-60920, Monte Nido
16 Estates, LLC. The next matter is Case Number
17 10-60953, Rossco Holdings, Inc. And that's all of
18 them.

19 So, may I have announcements, please.

20 MS. WENGER: Valerie Wenger for the United
21 States Trustee.

22 MS. TOMASCO: Your Honor, Patty Tomasco on
23 behalf of Pacific Mercantile Bank. I'm local counsel
24 for Winston & Strawn; that's Steve Atlee, David
25 Aronoff, Justin Rawlins and Saul -- yeah -- Rostamian.

1 THE COURT: Okay. I don't know if I got
2 all those names, but I did get yours.

3 MS. TOMASCO: I believe that Mr. -- I
4 believe that Mr. Atlee and Mr. Rawlins will be having
5 the speaking roles today.

6 THE COURT: All right. Thank you.

7 MR. KELLY: Good morning, your Honor.
8 Larry Kelly. I'm here for Mr. Leonard Ross.

9 MR. McCONNELL: Good morning, your Honor.
10 Michael McConnell. I'm here on behalf of the four
11 Debtor estates.

12 MR. RICHINS: Good morning, your Honor.
13 Travis Richins for National Guardian Life Insurance
14 Company. We're a claimant in the Rossco Holdings
15 case. We're also a creditor in two related cases that
16 are not on the docket today, --

17 THE COURT: All right. Thank you.

18 MR. RICHINS: -- Rossco Plaza and LJR.

19 THE COURT: Okay. Thank you.

20 MR. HOBBS: Just in case Ms. Wenger let's
21 me speak, Henry Hobbs for the U.S. Trustee.

22 THE COURT: She probably won't, but
23 nonetheless...

24 Okay. Well, what we had set on the docket today
25 was motions to appoint trustee filed by PMB, otherwise

1 known as Pacific Mercantile Bank Corp. I understand,
2 in the interim, starting with Friday, we've had a
3 flurry of activity in this case, including a motion to
4 transfer venue that I think was filed on Thursday,
5 some responses and pleadings going back.

6 We've also had a motion for continuance filed.
7 I believe -- Was it filed by the Debtors?

8 MR. McCONNELL: That's correct, your Honor.

9 THE COURT: All right. So, what do I do for
10 purposes of this morning? As I understand it, on the
11 motion to transfer venue, the Movant on the motion to
12 appoint trustee does not oppose the motion to transfer
13 venue at this point. Is that correct?

14 MR. McCONNELL: Well, let me see if I can
15 straighten this out.

16 THE COURT: Please.

17 MR. McCONNELL: Your Honor, the --

18 THE COURT: Oh, hang on a second.

19 Do we -- I'm sorry, Mr. McConnell.

20 Do we have anybody on the phone? Is there anyone
21 on the phone?

22 MS. BLACKER: Yes, your Honor. Monica
23 Blacker, of Andrews Kurth, on behalf of OneWest Bank.
24 We're -- We're a creditor in two of the pieces.

25 THE COURT: All right. I'm -- Can you turn

1 that up a little bit, Ms. Lopez? I didn't hear
2 counsel's name. Let's try that again, please.

3 Could you state your name again, please?

4 MS. BLACKER: Sure, your Honor. It's Monica
5 Blacker, B-L-A-C-K-E-R, from Andrews Kurth, on behalf
6 of OneWest Bank.

7 THE COURT: Okay. Anyone else?

8 (No audible response.)

9 THE COURT: All right. Thank you.

10 All right, Mr. McConnell. Go ahead.

11 MR. McCONNELL: Yes, your Honor.

12 Pacific Mercantile Bank, a creditor in the four
13 cases that are subject to this -- today's proceedings,
14 filed motions to appoint Chapter 11 trustees, or, in
15 the alternative, a Chapter 11 examiner, in all four
16 cases, on I believe it was September the 30th.

17 THE COURT: Right.

18 MR. McCONNELL: Last Thursday, Pacific
19 Mercantile Bank filed a motion to transfer the venue
20 of these four cases to California to be consolidated
21 with the individual Chapter 11 case of Mr. Leonard
22 Ross, the principal of these Debtors.

23 THE COURT: Right. He filed -- His filing
24 predated these cases; is that correct?

25 MR. McCONNELL: No.

1 THE COURT: All right.

2 MR. McCONNELL: It was after these cases
3 were initiated.

4 THE COURT: Go ahead.

5 MR. McCONNELL: So, on Friday we filed a
6 motion -- a joinder to the motions to transfer venue,
7 agreeing with Pacific Mercantile Bank that, in the
8 administration of justice and for the efficiency of
9 justice and the interests of the parties, that these
10 cases should, indeed, be transferred to California to
11 be consolidated with Mr. Ross's individual case. And
12 we promptly filed a motion to continue these hearings
13 so that these cases, when transferred, the motions to
14 appoint trustee can be heard by the California judge,
15 the same judge that is being faced with the motion to
16 appoint trustee in Mr. Ross's individual case.

17 So, in terms of today's proceedings, we believe
18 that this can either be a very short proceeding or a
19 very long proceeding. If the Court should deny the
20 motion to continue, then we are prepared to defend the
21 motion to appoint a trustee.

22 THE COURT: All right.

23 MR. McCONNELL: At whatever appropriate
24 point, my colleague, Mr. Kelly, would like to address
25 the merits of the motion, if you wanted that now or

1 later.

2 THE COURT: The merits of which motion?

3 MR. McCONNELL: Both.

4 THE COURT: All right. Well, I'll be happy
5 to hear on the motion to continue right now. Let's
6 deal with that first.

7 MR. KELLY: Good morning, your Honor.

8 THE COURT: Good morning.

9 MR. KELLY: Very briefly, let me do this in
10 kind of -- this part.

11 Mr. Ross is from California, so it made me think
12 of movies. This is sort of a three-part movie. It
13 started out as -- And this does relate to the
14 continuance.

15 THE COURT: Okay.

16 MR. KELLY: The -- It's the Princess Bride
17 movie. And all of these are facts from the pleadings
18 in the court, pleadings or the record. In the Colony
19 Lodging case, there's a motion for relief from stay,
20 so I'm taking most of these cites right now from that
21 pleading. This -- The loan was made --

22 THE COURT: Excuse me, Mr. Kelly. Who filed
23 the motion for relief from stay?

24 MR. KELLY: That was filed by this bank, --

25 THE COURT: All right.

1 MR. KELLY: -- PMB Bank.

2 The -- In that motion, they point out that the
3 loan at issue in Colony Lodging was made in January of
4 2009. In June of 2010, it was three months behind.
5 They're -- This is what I call the Princess Bride
6 stage. When they made the loan, everybody was happy,
7 and signed loans and passed money.

8 At some point, that loan got in default.
9 According to that pleading, it shows that in June of
10 2010 it was three months in arrears. If you count
11 that up, that means there were seventeen payments due;
12 fourteen had been made. At that point, they went into
13 an aggressive stage. I call this the Chicken Little
14 stage. The sky is falling; oh, my Lord, we need help.
15 According to that pleading, it shows that in state
16 court, PMB--I call them PMB; I'm sorry--the bank
17 filed a motion for TRO. They filed for a motion for
18 appointment of a receiver. And they also filed -- or
19 posted the property for foreclosure. That led to the
20 bankruptcy of all of these cases.

21 Postpetition, Chicken Little continues. And
22 every one of these cases were emergency motions for --
23 to disallow the use of cash collateral. There was a
24 motion for relief from stay in the Colony
25 Apartments -- Colony Lodging case, and there was an

1 expedited Rule 2004 requested. There was an interim
2 hearing; there were final hearings. Final hearings
3 were before Judge King in San Antonio. In the
4 meantime, this is Mr. Ross's third trip here from
5 California in about six weeks, all because of these
6 pleadings.

7 At that hearing, the lift stay was denied, the
8 cash collateral was permitted on a budget that the
9 parties in --

10 UNIDENTIFIED SPEAKER: The lift stay was
11 never -- it was never denied. We withdrew the lift
12 stay motion, based upon Ross's providing proof of
13 insurance, because the Colony Lodging property was not
14 insured.

15 MR. KELLY: I apologize. I will --

16 UNIDENTIFIED SPEAKER: You know, I don't
17 want to get these facts -- The facts are starting to
18 get...

19 THE COURT: All right. Is that correct,
20 Mr. Kelly, that --

21 MR. KELLY: That is correct. However, after
22 he came -- after we agreed to do that, and after he
23 was required to show up from California, and after we
24 were required to drive to San Antone, and after we
25 were required to appear before the Court, yes, they

1 withdrew it. Okay?

2 Then there was the Rule 2004. And that's been
3 pulled?

4 MS. TOMASCO: No. It's --

5 MR. KELLY: Denied?

6 MS. TOMASCO: No. It's been --

7 UNIDENTIFIED SPEAKER: The 2004 exams were
8 granted (inaudible).

9 MS. TOMASCO: Granted.

10 MR. KELLY: Okay. Now you come into the
11 current stage. In late September, we announced --
12 There was a notice on the Court's bulletin board that
13 we have a new judge appointed for Waco. All of these
14 hearings were before Judge King.

15 THE COURT: Right.

16 MR. KELLY: September 29th, these
17 announcements were made to the court. I'm looking to
18 see if there's any disagreement.

19 THE COURT: You mean, to Judge King?

20 MR. KELLY: Judge King. I apologize.

21 THE COURT: Sure.

22 MR. KELLY: And on the very next day, we
23 go into the Casa Blanca mode, which is the current
24 emergency pleadings filed by this bank. Okay?
25 They've asked to appoint a trustee in four cases.

1 Just briefly, the court record will show,
2 Monte Nido, which is property outside of
3 Santa Barbara, very valuable, very expensive property;
4 I think the debt's roughly \$9 million on that
5 property. It's above land; it's unimproved; it's
6 dirt. I don't know why we would need a trustee on the
7 Monte Nido Estates. The property in Killeen is a
8 commercial lease. I don't know why we need a trustee
9 on the commercial lease. The Rossco properties, I
10 don't understand.

11 The only property that they would argue they need
12 is the property, Colony Lodging. From their
13 pleadings, there's an emergency motion for the
14 appointment of a trustee: My Lord, we've got to have
15 it today; we've had all these other hearings, but
16 we've got to have it today. Why? Because we've
17 learned -- we've learned, that pleading says, that
18 Mr. Ross has filed a Chapter 11, personally, and has
19 been gambling postpetition with funds.

20 Subsequent to that, when they were advised that
21 was incorrect, they filed a Supplemental Pleading
22 Number 1. Subsequent to that, they filed Supplemental
23 Pleading Number 3. Then they file a motion to
24 transfer venue to California.

25 All right. Let's just go to the argument.

1 THE COURT: Maybe they found out I was the
2 judge and they weren't happy about that, and they
3 wanted to go to California.

4 MR. KELLY: I would go on the record and say
5 I doubt that that's accurate, your Honor. I'm sure
6 they're pleased with the Court.

7 THE COURT: I'm just pulling your leg
8 a little bit, Mr. Kelly. Go ahead.

9 MR. KELLY: Thank you.

10 They filed a motion to transfer venue. As the
11 Court knows, under 1104, the Court no longer -- unlike
12 the old days, no longer appoints a trustee. The Court
13 orders the appointment of a trustee. So, the pleading
14 here today is not to appoint a trustee, it's to order
15 the appointment. That order would go to the Office of
16 the U.S. Trustee. And under the Code -- They know
17 their job better than anybody, but they're going to
18 have to get input. They have 30 days. They would
19 appoint a trustee. It's Section 1104 of the Code.

20 In the meantime, the same Movants are asking to
21 send these cases to California. Okay? So, what they
22 want you to do is order appointment of a trustee, and
23 then send this to California. I'm going to assume, to
24 be honest, that they don't really want Mr. Hobbs and
25 his staff to appoint a trustee in Austin and then tell

1 the judge, Judge Zurzolo -- Vince Zurzolo's the judge
2 in Los Angeles that has the individual case. And
3 under their rules, these would be consolidated. And
4 my belief is, he would end up as the base judge for
5 all of these cases. I'm sure they don't want to send
6 it out there with a trustee already appointed. They
7 might. But what they want you to do is enter an order
8 and tell that judge he has to order the U.S. Trustee
9 to appoint a trustee.

10 Now, that costs money. Trustees cost a fortune.
11 I don't need to tell the Court what the state of the
12 law is in Texas, but this is an emergency hearing.
13 It's akin to a TRO. It's clear and convincing
14 evidence. They know what -- My opinion is, from their
15 pleadings, supplemental pleadings, they no longer are
16 arguing that funds were used by Mr. Ross postpetition
17 from his estate, at all. They're now back to, we just
18 think he's incompetent in general. So, you're going
19 to have to hear evidence on all of the administration.

20 I can tell the Court, in my opinion, they're not
21 going -- there's not going to be a trustee appointed.

22 What I would like your Honor to do is grant the
23 continuance because of the motion to transfer venue,
24 which we will agree to. This will be in California
25 quickly. It can be heard in California. If they have

1 a reason that the sky is going to fall tomorrow, this
2 afternoon, next Thursday, then that's what we should
3 be ordered to concentrate on today. Otherwise, you
4 should grant the continuance and transfer the case.

5 If we have to try it, I would like to
6 respectfully request the right, at the end of the
7 conclusion of the hearing, when the Court rules, to
8 have the right to withdraw our request to transfer --
9 our consent to transfer venue. Why? Venue -- This
10 case was filed here; nobody objected. 341s were
11 scheduled; nobody objected. All their pleadings were
12 filed, interim orders were entered, final hearings
13 were held in San Antone; nobody objected. New judge
14 appointed, new emergencies filed; nobody objected to
15 venue.

16 Suddenly, two months into the case, they want to
17 transfer venue. I would like the ability to argue
18 it's been waived, should the Court deny appointment
19 of the -- deny the continuance and then, ultimately,
20 deny appointment of a trustee.

21 THE COURT: All right. Thank you,
22 Mr. Kelly.

23 Before I let you respond, does counsel from
24 Andrews Kurth have a position on the motion to
25 continue?

1 MS. BLACKER: No, your Honor.

2 THE COURT: All right. You don't, one way
3 or the other?

4 MS. BLACKER: No.

5 THE COURT: All right. Now, -- All right.
6 Go ahead, sir. And announce your name for the record,
7 please.

8 THE COURT: Thank you, your Honor. Steven
9 Atlee on behalf of Pacific Mercantile Bank.

10 With regard -- Taking the motion to continue
11 first, your Honor.

12 THE COURT: Yeah. Let's deal with that.

13 MR. ATLEE: We did file an opposition to it
14 on Friday. I know there was a flurry of filings. But
15 the point made in that opposition is, the only reason
16 given to continue our arguments relating to judicial
17 economy, we submit that that is a less compelling
18 interest than protecting the Debtor's estates and
19 dealing with the serious issues that are raised in the
20 trustee motion.

21 THE COURT: What about Mr. Kelly's point?
22 I mean, I'm sorry, I'm a little -- I have to tell you,
23 I'm a little bit confused by this. Not confused that
24 I don't understand what's going on, but confused why
25 you -- We set this on an emergency basis, but as

1 I recall, we set it ten or eleven days ago. So, this
2 has been pending a while. We just didn't say, the
3 next day, let's have the hearing on the motion to
4 appoint a trustee, which, to my way of thinking, is a
5 fairly significant event in the case.

6 And then on the eve of the hearing, you move to
7 transfer venue. So, why shouldn't that be the
8 operative pleading I should consider first?

9 MR. ATLEE: Well, because that would be the
10 tail wagging the dog, your Honor.

11 THE COURT: Why?

12 MR. ATLEE: In terms of the serious issues
13 that are raised in the trustee motion. The venue
14 motion relates to the convenience of the parties.
15 Now, you know, whether we all think that it would be
16 more convenient to litigate in California as opposed
17 to Texas, so be it. It seems like we're all in
18 agreement on that. But that's --

19 THE COURT: So, why shouldn't I transfer --
20 Why shouldn't I accept your suggestion and transfer
21 the case, but not appoint a trustee? It seems
22 silly --

23 MR. ATLEE: The -- The --

24 THE COURT: If I may, it seems silly for
25 me to make Mr. Hobbs go and do his duty, appoint a

1 trustee, and then transfer the case, because then
2 they're going to have to appoint a new trustee in
3 California.

4 MR. ATLEE: It's not silly, your Honor,
5 because whoever the trustee is that's appointed, it's
6 going to be somebody who has expertise to deal with
7 properties in both Texas and in California.

8 THE COURT: Okay.

9 MR. ATLEE: Okay? It's also not silly
10 because we need this, really, now. This -- This --

11 THE COURT: What are we -- What are we
12 concerned about immediately? What are we concerned
13 about that -- what Mr. Ross is going to do that really
14 concerns you in the interim that I can't just hold off
15 on this and decide whether or not to transfer venue?

16 MR. ATLEE: Well, by his own admission, in
17 the declarations that he's filed, he has gambled half
18 a million dollars in a -- looks like a one-day period.

19 THE COURT: Is this of his personal funds or
20 funds of the Debtor?

21 MS. TOMASCO: We don't know.

22 MR. ATLEE: We don't know.

23 THE COURT: Okay.

24 MR. ATLEE: Because we have very incomplete
25 schedules, schedules which were filed two and a half

1 months ago. At the meeting of creditors, it was
2 completely obvious that they were inaccurate and
3 needed to be amended. He is the ultimate owner of
4 Rossco Holdings, which owns Colony Lodging. So, all
5 of the money that is missing from Colony, we don't
6 know where it went. There are key questions in the
7 schedules that he has -- he didn't answer in the first
8 instance and continues not to answer.

9 THE COURT: What about, Mr. Atlee, the
10 discussion on the record: Is there or is there not a
11 2004 exam scheduled?

12 MR. ATLEE: There's one scheduled for
13 Mr. Ross. I believe it's before December 15th.

14 THE COURT: December?

15 MR. ATLEE: Correct. We were pushing --
16 At --

17 THE COURT: Well, hold on. Hold on.

18 Now, I'm new to this game, and maybe I'm asking
19 some silly questions. But if you're concerned about
20 the conduct of Mr. Ross, why is the 2004 scheduled in
21 December?

22 MR. ATLEE: At the hearing on the -- on the
23 29th of September, we were pushing for an early 2004
24 exam. They moved to quash. Mr. Ross got up and
25 testified why it would take him that long to get

1 prepared to sit for them, in terms of collecting
2 documents. Basically, he argued that he was in such
3 disarray that he couldn't do it before then.

4 THE COURT: All right. Now -- And, so,
5 Judge King ruled and said December 15th, and you did
6 that by agreement?

7 MR. ATLEE: Judge King ruled, and that
8 was -- you know, we accepted his ruling, but it's
9 continuing to frustrate the flow of any real
10 information. There's no transparency in terms of
11 where this money is coming from.

12 THE COURT: All right.

13 MR. ATLEE: And, fundamentally, I would
14 submit that if Mr. Ross is in a casino, whether it's
15 on August 2nd or in September, or whatever, he's
16 signing hundreds of thousands of dollars worth of
17 markers. It's not clear. We've asked him. He's --
18 He's -- He's not told us that he -- you know, what
19 accounts he had submitted in his credit application to
20 Caesar's. He's not ever told us that there was enough
21 money in those accounts.

22 It -- It would appear to me that he is out of
23 control. And that's a situation that is emergent, and
24 we are -- that's the emergency that we are dealing
25 with.

1 THE COURT: All right.

2 MR. ATLEE: Just -- I would also just tell
3 the Court, we first learned about this gambling
4 situation on the afternoon of September 29th. So...

5 THE COURT: No, I recognize that.

6 MR. ATLEE: We weren't able to bring this to
7 the attention of Judge King at the time. I have a
8 feeling that we would be in a much different place had
9 that happened.

10 THE COURT: You all can't control the fact
11 that we've added a new judge and I picked up Waco.
12 I recognize that. That's beyond your control. That's
13 just how we worked things out. So, you're stuck with
14 me, at least for the interim.

15 MR. ATLEE: We're happy to have you, your
16 Honor.

17 THE COURT: All right.

18 MR. ATLEE: And with regard to the motion to
19 transfer venue, again, in the grand scheme of things,
20 would we be -- would it be easier for us in
21 California? Yes. But that should not become the
22 reason for Mr. Ross and the Debtors to not deal with
23 the trustee motion today. They -- They're all too
24 happy to push it off, but -- but that is the issue for
25 today.

1 THE COURT: Well, we've got a lot of smart
2 people in this courtroom. Can't we come up with -- If
3 your concern is about dissipation of assets, or
4 dissipation of money of the estate, can't we work
5 something out in the interim until the issue of
6 appointment of trustee comes before either me or the
7 judge in California?

8 MR. ATLEE: Well, I think the issue of
9 appointment of trustee is before you today. That's
10 what we seek.

11 THE COURT: But let's assume that I'm
12 persuaded -- Let's just, for discussion purposes,
13 because Mr. Kelly's going to have to address this, but
14 let's say that I think, really, the way to deal with
15 this is for me to transfer the case, but put in some
16 interim relief so that, if you really think Mr. Ross
17 is committing a lot of wrongdoing, we place some
18 controls on him so he can't do that, as sort of a
19 mechanism, if you will, to address your concerns in
20 the interim.

21 MR. ATLEE: We don't have accurate
22 schedules. We don't have a 2004 for another couple of
23 months. There's no transparency in terms of where
24 this money is going.

25 THE COURT: Okay. And I understand you're

1 concerned. It's just, I'm trying to think, surely we
2 should be able to come up...

3 What is it that you want Mr. Ross not to do?
4 Let's assume, if I said to you, all right, Mr. Atlee,
5 I'm of the opinion that really what I ought to do is
6 transfer venue, and I'm not going to appoint a trustee
7 at this point. And then I said to you, what is it you
8 don't want Mr. Ross to do in the interim, what would
9 your answer be?

10 MR. ATLEE: To continue to conceal and
11 not -- not report. He needs to tell us -- He needs
12 to -- to correct schedules immediately. He needs to
13 submit to a 2004 so that we can explore the -- the
14 gambling, transfers between the Debtors and Mr. Ross
15 and the Ross trusts. He basically -- You know, from
16 the information that we have now, he's not a man who
17 is acting responsively -- responsibly or -- or under
18 control. You don't lose half a million dollars in
19 a day in a casino and then come to bankruptcy court
20 and say that you're the person who should be in charge
21 of the Debtors.

22 THE COURT: All right. All right. You'll
23 get another shot. I appreciate it.

24 Before I hear from you, Mr. Kelly, does
25 Ms. Wenger or Mr. Hobbs want to say anything? Because

1 this somewhat implicates you in terms of the exercise
2 of your duties with regard to appointment of trustee.

3 MS. WENGER: It does, indeed, your Honor.
4 Valerie Wenger for the U.S. Trustee.

5 With respect to two of these cases, I don't think
6 a trustee is warranted.

7 THE COURT: Which two are those?

8 MS. WENGER: The WM Properties case, and
9 then the Monte Nido Estates case.

10 THE COURT: Because why?

11 MS. WENGER: Well, normally I would say, in
12 the Monte Nido -- Monte Nido Estates case, the land's
13 not going anywhere. But since this land is in
14 California and it's probably near a fault line, it
15 might be going somewhere.

16 THE COURT: Fair enough.

17 MS. WENGER: But a trustee's not going to be
18 able to do anything about an act of God.

19 Secondly, with WM Properties, it has a building
20 in Killeen. It's -- A small portion of it is being
21 rented out. So, to the extent there would be any
22 money flowing upstream and not going to the creditors,
23 it would be a very small -- small amount.

24 The Colony Lodging case is the most problematic,
25 an apartment complex in College Station. But

1 according to the schedules, the books and records are
2 all in California, so a trustee's going to have to be
3 willing to go back and forth between the two.

4 THE COURT: Okay. And then Rossco Holdings
5 is what?

6 MS. WENGER: It's primarily a holding
7 company, your Honor.

8 THE COURT: That's what I thought. So, with
9 re- --

10 MS. WENGER: I'm just going to let Mr. Hobbs
11 speak.

12 THE COURT: Okay. Now, my question was
13 going to be--and I think Mr. Hobbs will address
14 this--I need some guidance, to the extent you want to
15 put it on the record. Is my sense correct? Why
16 should I go through the exercise of appointing a
17 trustee here if the case is going to be transferred to
18 California?

19 MR. HOBBS: Your Honor, I'm not sure that we
20 can -- we can answer that question. There are,
21 obviously, practicalities that have to be weighed with
22 respect to what the parties can prove with respect to
23 a burden of proof, --

24 THE COURT: Right.

25 MR. HOBBS: -- and under 1104, whether a

1 trustee ought to be appointed or not.

2 The practicalities are -- Well, first of all, let
3 me say, the U.S. Trustee can do whatever we need to
4 do, whatever you order. If you direct us to appoint a
5 trustee, we can coordinate with the office in
6 California, see who a viable candidate might be from
7 that jurisdiction, who might ultimately end up with
8 it. It is a bit of a chicken-and-egg problem, because
9 normally, if the Court ordered the appointment of a
10 trustee, we would look at least somewhat locally in
11 the State of Texas for someone to do that, even if
12 the -- even if the case was going to be transferred to
13 California.

14 But if it's going to be transferred to
15 California, then we might speak to our colleagues in
16 California to see who would be a viable candidate, who
17 would be dealing with that court out there. Then they
18 would have to coordinate on-site management, if that's
19 necessary, with respect to at least one of the Debtors
20 where the property is operating, with respect to an
21 apartment complex.

22 Obviously, those aren't impossible things to do,
23 and we can accomplish those. As a matter of
24 practicality and cost, those are legitimate
25 considerations that I think the parties will argue to

1 you. Of course, we will do whatever we need to do,
2 and whatever you order us to do, we'll figure out a
3 way to do it. From -- But from a practical
4 standpoint, I think the Court is going to have to
5 weigh, you know, the chicken-and-egg issue. I think
6 the parties have a bigger stake in that. We'll do
7 what you order us to do, and we'll do the best job
8 that we can in balancing those things.

9 But, certainly, a trustee costs money. And in a
10 case that involves California and Texas, there's going
11 to have to be at least some understanding from the
12 moving parties, if they want a trustee, how that's
13 going to be funded in the case going forward, whether
14 it's -- the bankruptcy court here in Texas hears it or
15 the bankruptcy court in California.

16 THE COURT: Exactly. All right.

17 All right, Mr. Kelly. Let's assume that we
18 operate under the assumption that I think what I ought
19 to do is transfer venue, but I am deeply concerned
20 about any malfeasance that happens in the interim.
21 How are you going to address my concern? Because I
22 will be most unhappy if I find out any shenanigans are
23 going on in the interim. So, how do we deal with
24 that?

25 MR. KELLY: I would make the following

1 comments, which are, again, clear from the docket
2 sheets in the various cases.

3 When Mr. Ross initially got advice to file
4 bankruptcy, he had different counsel. I'm not going
5 to say that counsel did anything wrong. I am going to
6 say that we differ on what that advice should have
7 been. And those counsel -- that counsel has been
8 changed. Mr. McConnell is now counsel directly for
9 each of these estates. He's a former federal
10 bankruptcy judge. I think he's completely familiar
11 with the obligations and responsibilities of the
12 Debtor. I can assure you--I'm representing Mr. Ross,
13 individually--we have had this talk. He now fully
14 understands all of his duties and obligations.

15 So, I think he's been counseled and addressed
16 with counsel who are responsible, number one.

17 Number two, I would point out, no other party --
18 Remember, I go back to the state court case: We want
19 a receiver, we want a TRO, we want to foreclose. This
20 bank has required Mr. Ross to respond to pleadings
21 continuously for three months. Every time he turns
22 around, he's been asked, and he keeps coming to Texas.
23 It's expensive, it's time-consuming. It's very
24 difficult to run your business and operate with this
25 continual pressure.

1 Number three. There are cash collateral orders
2 in every case which already restrict, seriously, the
3 use of funding. "They," the bank, asked the court,
4 Judge King, not to allow this Debtor to use any money.

5 Those hearings were held. Orders are entered.
6 There is a budget in each case that has a dollar. The
7 Debtor is already under restrictive orders to fully
8 comply with those cash collateral orders, and they are
9 continuing.

10 Fourth. On the discovery issue, there is an
11 initial document production due --

12 I believe it's October 15th?

13 -- which is a couple of weeks (sic).

14 Next, Mr. Ross --

15 THE COURT: Actually, it's this week,
16 Friday.

17 MR. KELLY: Sorry. I apologize. I did find
18 my way back to Austin.

19 THE COURT: Okay.

20 MR. KELLY: So, I'm competent to do a
21 little bit. The -- And I did forget it was this week.
22 The --

23 THE COURT: But we're going to comply with
24 that, aren't we?

25 MR. KELLY: My understanding is, that will

1 be fully complied with.

2 THE COURT: All right.

3 MR. KELLY: Next, the Debtor, since all of
4 this stuff, has filed a Chapter 11 in California. He
5 is under orders in California, 11 USC 363 obligations
6 with what he can do and not do with his interest in
7 property. He is under requirement of that U.S.
8 Trustee to open a debtor-in-possession account, which
9 is why this bank account was closed. And, so, right
10 this minute, I will tell you from what I've heard,
11 there is no clue on their part of any wrongdoing.
12 They say they don't know everything. I will tell
13 you the testimony will unequivocally show you that
14 there is no funds of any of these estates that's been
15 used gambling, at all.

16 Further, even from their documents attached to
17 their current pleadings, there is no liability on
18 these estates. They didn't guarantee any debt
19 gambling anywhere. This estate, these estates have no
20 obligation. And even on their pleadings, it's a note;
21 you go to the casino, you sign a note. I would say
22 this. I would imply that Caesar's doesn't normally
23 give a half-million-dollar line of credit to every guy
24 that walks in off the street. Mr. Ross has been in
25 business many years. He has -- If we go through the

1 testimony, he has handled many transactions in this
2 state alone that are huge, that are big.

3 Since the hearings in Austin, we have signed
4 agreements to sell both hotel properties, that if
5 those close, will pay everybody in full, including
6 some unpaid wages in those cases. We have other
7 property that's under contract for sale. I actually
8 got a call from a client that I can't handle.

9 MR. RICHINS: Your Honor?

10 THE COURT: Hang on.

11 Yes?

12 MR. RICHINS: Your Honor, Travis Richins for
13 National Guardian Life Insurance Company.

14 THE COURT: You need to come up, counsel.

15 MR. KELLY: They're -- Whether that's
16 objected to or not, I'm just stating the fact that we
17 have signed a contract to sell those properties.
18 National Guardian, this is counsel, they can respond.
19 They may or may not agree to it, they may or may not
20 agree to a sale, they may oppose it daily. But we are
21 working on getting that property sold.

22 THE COURT: All right, counsel. I'll let
23 you address -- Do you want to address it now?

24 MR. RICHINS: Okay. I want to --

25 THE COURT: And, for the record, you are?

1 MR. RICHINS: Travis Richins, for National
2 Guardian Life Insurance Company. We're a claimant
3 in Rossco Holdings, Inc.

4 THE COURT: Okay.

5 MR. RICHINS: I just wanted to make clear,
6 one fact is that the only reason that there has been
7 no request for a transfer in those two cases -- in the
8 LJR Properties and in the Rossco Plaza, Inc., case is
9 because the stay has been lifted in those cases and a
10 motion to dismiss will be entered in those cases. And
11 we have no objection to the appointment of a trustee
12 at this time.

13 THE COURT: All right. Thank you.

14 Go ahead, Mr. Kelly.

15 MR. KELLY: I would address any concern that
16 this counsel can give evidence on this stand today
17 that shows there's any issue that can't be resolved by
18 the court in California in a few weeks. None have
19 been raised. They just have this generic, he gambles.
20 It's not illegal. They've failed to mention to you
21 that Mr. Ross, in his case, has a proposed net worth,
22 according to current appraisals, of \$50 million. This
23 is not a guy who's running these things into the
24 ground.

25 So, if they can show me a single concern, we will

1 address it specifically with language today. But
2 between cash collateral orders, his Chapter 11, his
3 current debtor-in-possession account, and the rulings
4 and the budget already entered by this Court through
5 Judge King, I think we're covered.

6 THE COURT: All right. Mr. Atlee?
7 Counsel, did you wish to say something else?

8 MR. RICHINS: Just --

9 THE COURT: Come to the podium. We won't --
10 We won't get it on the record if you don't come to the
11 podium, sir.

12 MR. RICHINS: Just regarding his comment
13 that this is -- he has not been running properties
14 into the ground. Both the LJR Properties, Limited --
15 I mean, LJR Properties, Limited, and the Rossco Plaza,
16 Inc., which is a Plaza Hotel, both of them are hotel
17 properties, were run into the ground.

18 THE COURT: All right. That's your
19 assertion. All right.

20 Mr. Atlee?

21 MR. ATLEE: Your Honor, we'll be happy to
22 put on evidence if Mr. Ross wants to testify. Our
23 papers, I think, put a serious issue as to whether or
24 not, at the time that he signed a half million dollars
25 worth of markers at Caesar's Palace, he had money in

1 the accounts to cover those debts. That is
2 potentially a Class D felony, under Nevada law. It
3 certainly is a strong indication of --

4 THE COURT: But that's -- Is that really my
5 concern?

6 MR. ATLEE: Well, it is, because he is
7 the -- currently in charge of the Debtors. If --
8 Their argument, taken to its extreme, would mean that
9 he can do whatever he wants, however fraudulent,
10 however dishonest, however egregious in his personal
11 conduct, and -- and still be the person who's allowed
12 to be in charge of the Debtors. And the case --

13 THE COURT: Well, I think Mr. Kelly's point
14 was, didn't Judge King -- didn't you all reach
15 agreements on use of cash collateral, and doesn't it
16 put the Debtors on a budget? So, there should be some
17 limitation on the dissipation of money, shouldn't
18 there?

19 MR. ATLEE: Well, your Honor, there -- even
20 under that regime, there are serious concerns. Our
21 papers refer to the fact that in the petition for
22 Colony Lodging, for example, at the time that he
23 filed, he indicated there was more than \$40,000 worth
24 of cash in a bank account. The monthly operating
25 reports now show less than a thousand dollars.

1 There's been no explanation of where that money went.
2 And, again, we are operating in the dark here. What
3 we do know is that, here's a man who appears to be out
4 of control in his personal behavior, at the same time
5 that we are not getting accurate information on the
6 petitions.

7 I understand that he's run through a couple of
8 sets of counsel. But it's been a month since
9 Mr. McConnell has been representing him, and we still
10 have the same petitions that were originally filed
11 that I think everybody would agree are -- are woefully
12 inaccurate. And, so, what we need are, you know,
13 strict controls.

14 If -- If the Court is not willing to start the
15 process of appointing the trustee today, then, in the
16 alternative, what we need is him to update his
17 schedules immediately. He should sit --

18 PHONE VOICE: The host has disconnected.
19 The conference will now end.

20 THE COURT: Sorry about that.

21 MR. ATLEE: That's quite all right.

22 THE COURT: Go ahead, please.

23 MR. ATLEE: He should sit for an exam next
24 week to explain what the flow of money is from and
25 among all of the Debtors up to the trusts and to

1 himself. We don't know where this money is coming
2 from, you know. It's nice that he claims to have --
3 (Electronic/telephone noise.)

4 THE COURT: I'm sorry. Go ahead, please.

5 MR. ATLEE: It's nice that he claims to have
6 a personal worth of \$50 million, but from our
7 perspective, he -- he owes my client, you know,
8 something on the order of -- of 20 million. And he
9 isn't reporting, he isn't telling us where the money
10 is, and -- and the behavior is -- is highly
11 concerning.

12 So, again, I would -- I would urge the Court to
13 attend to that serious problem today, rather than
14 allow this just to get deferred and, you know, kicked
15 down -- down the road so that the California court can
16 deal with it.

17 THE COURT: All right. Thank you.

18 Mr. McConnell, what about the issue of updating
19 the schedules? Does that need to be done?

20 MR. McCONNELL: Yes, your Honor.

21 THE COURT: How soon?

22 MR. McCONNELL: We have recognized that
23 problem from the beginning. We've been spending the
24 last month since I've been involved in the case
25 responding to emergency motions for this, that, and

1 the other, by Pacific Mercantile, and, frankly, hadn't
2 gotten to it. But we will. I mean, it's -- it's
3 simply something --

4 THE COURT: How soon will you get to it?

5 MR. McCONNELL: Your Honor, we have a
6 document production from the Colony properties on
7 October the 15th. We would commit to this Court to
8 have the schedules amended--we have gone over it with
9 the United States Trustee--three areas on each set of
10 schedules that need to be amended. And we can do that
11 by the end of this month.

12 THE COURT: Okay. I assume you're not going
13 to agree to scheduling an exam next week, given Judge
14 King's prior ruling.

15 MR. McCONNELL: No, your Honor. We had
16 a lengthy hearing in San Antonio on our motion to
17 quash. We made a specific proposal to Judge King on a
18 timetable that we thought that we could commit to with
19 respect to the Rule 2004 examination. And I believe
20 Judge King's ruling was, I agree with the Debtor's
21 proposal and that's what my order will be. And that,
22 you know, is the way that that played out.

23 Just one other brief comment, because I think
24 this Court's looking for a practical solution to the
25 accusations made by Pacific Mercantile. First of all,

1 there are detailed budgets and cash collateral
2 agreements with respect to Colony and WM Properties,
3 the only properties that are really generating income
4 that is a concern of Pacific Mercantile. Those orders
5 are in place today. If they have some concept that
6 Mr. Ross is going to be riding across the horizon
7 taking money from the estates, obviously, he would be
8 violating those cash collateral orders, and he's got,
9 certainly, competent counsel to be supervising him.

10 Second, if that's a concern, we will commit to
11 hire a commercial property manager for the Colony,
12 which is the one property that -- out of the four that
13 they're talking about, that actually generates
14 significant income. We'll use their cash collateral
15 to pay for that property manager. And that property
16 manager can have a two-signature system on checks so
17 that not one dollar that is spent from the Colony
18 doesn't have the signature not only of Mr. Ross but of
19 the property manager. That money's not going
20 anywhere.

21 With respect to WM Properties, there is a small
22 commercial building; it has one lease; it generates
23 about \$4,000 a month in rent. That makes a full
24 payment to Pacific Mercantile, and there's nothing
25 left after the payment of operating expenses.

1 So, it's a tempest in a teapot, your Honor.

2 There are more than sufficient controls in place right
3 now to maintain the status quo until these cases get
4 to California, and the California judge that they've
5 asked to hear these matters can hear the matters. I
6 think there's a very practical solution here.

7 THE COURT: All right. Don't step away.

8 Yes, sir?

9 MR. RAWLINS: I just wanted to ask.

10 MR. McCONNELL: All right.

11 THE COURT: Go ahead and yield the podium
12 for a minute, then I'm going to visit with you all.

13 MR. McCONNELL: All right.

14 THE COURT: Go ahead. And you are, sir?

15 MR. RAWLINS: Justin Rawlins, of Winston
16 Strawn, for Pacific Mercantile Bank.

17 THE COURT: Okay.

18 MR. RAWLINS: One of the things I think, as
19 far as the 2004 exam request, I think we should
20 clarify that.

21 We're concerned about having the 2004 exam, or
22 even just a limited exam on the gambling, and the use
23 of funds without -- with insufficient funds in the
24 bank accounts. We still haven't received any
25 explanation as to why 500,000 checks -- dollars of

1 checks were written on an account that had \$44 in it.
2 And that's a big problem for us.

3 Now, as far as the management of the estates,
4 yes, our biggest concerns are failure to pay property
5 taxes, other things that are bigger-picture issues
6 that aren't going to cause a huge problem in the next
7 week. We'll probably get a hearing in front of Judge
8 Zurzolo next week. But we'd like to have a 2004 exam
9 now. We've asked Mr. Ross for an explanation as to,
10 where were the funds? Where were the funds when you
11 gambled half a million dollars? Where are the funds
12 when we have evidence of other gambling?

13 That's -- That's what we want to figure out now.
14 And I think that would actually be better to have this
15 week so we could avoid a hearing, potentially, on a
16 motion to -- a motion to appoint a trustee in the
17 individual -- in the individual case, and these cases,
18 when they're transferred, next week.

19 It's -- You know, as far as the -- the cash
20 collateral budget, yes, he's agreed to it. And, yes,
21 if he violated it, that would be a major problem, and
22 we could take that up later. So...

23 THE COURT: All right. Don't step away.

24 Mr. Kelly, Mr. McConnell, come on up here.
25 We'll have a little chat. Do you want to address

1 that, Mr. Kelly? And then I'd like to...

2 MR. KELLY: Very briefly.

3 I don't want to say it's none of their business.
4 Okay? What I do want to say is, Mr. Ross is in a
5 Chapter 11. He has his own estate. He has his own
6 counsel, and he's in California. Why they've got to
7 know these specific issues today is beyond me. If
8 they want to ask, was any money in these estates used,
9 we'll answer that question today. If you want to ask
10 whether these estates have any liability, we'll answer
11 that today. I'd like to know why he flew in from
12 California. I'd like to know how many lawyers are
13 billing on this clock here, because I expect there's
14 going to be an objection to the reasonableness of fees
15 coming down the road. We have three expensive lawyers
16 sitting here on this matter.

17 So, no, I don't want to do a 2004 this week.
18 He's already been here three times. He's already had
19 these issues. He's already under restrictions. Who
20 cares?

21 THE COURT: Now, the 2004, was it filed with
22 regard to the business entities or with regard to him,
23 individually?

24 MR. KELLY: They were with regard to the
25 business entities, because that's all that's in

1 bankruptcy here.

2 THE COURT: Right.

3 MR. KELLY: He got divorced two years ago.
4 Do they want to talk about how well he handled his
5 marital estate? Do they want to talk about how it was
6 divided?

7 THE COURT: All right.

8 MR. KELLY: Do you want to talk about
9 property that's not in bankruptcy?

10 UNIDENTIFIED SPEAKER: Let's not get into
11 ridiculous --

12 MR. KELLY: I am being -- You are being
13 ridiculous.

14 THE COURT: All right, Mr. Kelly.
15 Mr. Kelly, I understand your point.

16 All right. This is what we're going to do.
17 Believe it or not, I'd very much like to keep these
18 cases. I really would. A messy case does not concern
19 me in the least. I specialize in those.

20 But what I'm going to do, it seems -- First of
21 all, I'm going to grant the motion to continue. Given
22 the intervention, if you will, the filing of the
23 motion to transfer venue, which everyone's in
24 agreement with, and based upon the allegations that
25 are here on the motion to transfer venue as to why

1 this case should be in California, I fully agree it
2 ought to be in California. So, I'm going to grant the
3 motion to continue.

4 I'm satisfied, based upon the arguments that have
5 been placed with the Court this morning regarding the
6 appointment of the trustee and the concerns regarding
7 the administration of the estate in the interim, that
8 that's not going to happen, given prior orders of the
9 Court that there's not going to be dissipation of
10 assets, there's not going to be malfeasance, there's
11 not going to be misappropriation, because I have two
12 gentlemen on the Debtor's side that certainly know
13 better than to allow that to happen. So, I'm going to
14 grant the motion to continue.

15 The question I have first, gentlemen, is, I
16 assume that I still need to set this for hearing, the
17 motion to transfer venue, in the event that someone
18 opposes it. So, that's my first question to you all,
19 or should I just transfer the case outright?

20 MR. RAWLINS: Your Honor, we'd like the case
21 to be transferred outright so that we could move
22 forward in the individual case, rather than having a
23 lag period right now where we're prevented from doing
24 anything.

25 THE COURT: All right. Mr. Kelly?

1 MR. KELLY: Your Honor, we would -- on
2 behalf of Mr. Ross, we would agree to that.

3 And I don't want to argue this further, but on
4 the 341 meeting, or on a Rule 2004 meeting, he has a
5 case in California; we're agreeing to transfer, then
6 go ask Judge Zurzolo. He lives in California. He
7 lives in Los Angeles, --

8 THE COURT: Right. If they're just --

9 MR. KELLY: -- as this counsel does. Let's
10 do it out there.

11 THE COURT: If the issue -- If the issue
12 is he's done something wrongful, they haven't filed a
13 2004 in his case, yet, have they?

14 MR. KELLY: No, sir. Not that I'm aware of.

15 MR. RAWLINS: I'm sorry to say, your Honor,
16 we've requested it and we've received no response to
17 the last time.

18 THE COURT: All right. So...

19 MR. KELLY: We would -- On behalf of
20 Mr. Ross, I would concur in the Court entering an
21 order to transfer today.

22 THE COURT: Mr. McConnell?

23 MR. McCONNELL: Yes. That'd be fine with
24 us.

25 THE COURT: All right. Seriously, I --

1 Yes, sir?

2 MR. RAWLINS: I think this is clear, but
3 we just want to have abundantly clear on the record
4 that the two -- the Rossco Plaza, Inc., and the LJR
5 Properties, Limited, are not being transferred.

6 MR. McCONNELL: We concur, your Honor.

7 THE COURT: All right. That's fine.

8 All right. So, first of all, what I'm going to
9 do is, I'm going to -- I'm going to, in essence, grant
10 the motion to continue because I'm going to transfer
11 venue in these four cases, based upon the agreement
12 of the parties.

13 Second of all, I expect, as part and parcel of
14 this process, the document production will go forward
15 on the 15th, that updated schedules or amended
16 schedules, as to the four corporate Debtors, will be
17 filed no later than the end of the month, whatever day
18 that Friday is, let me see, which is the 29th, that
19 that will happen.

20 This is without prejudice to Pacific Mercantile
21 Bank seeking a 2004 exam in Mr. Ross's personal case.
22 Furthermore, if you all want to have an informal
23 discussion about what Mr. Ross did or did not do with
24 those monies as it relates to his gambling debts,
25 please, have that discussion and see what it -- see

1 what it accomplishes. But...

2 Now, what about -- Mr. Atlee, what about the
3 suggestion, if you're concerned about as it relates to
4 Colony Lodging appointing a property manager? Do you
5 want to do that, or not?

6 MR. ATLEE: Your Honor, I think at this
7 point, if -- if the Court is inclined just to transfer
8 venue to California, we'll -- we'll simply leave it at
9 that for now. I guess I would ask you, in terms of
10 timing, when does the Court anticipate entering that
11 order?

12 THE COURT: I can enter that order today.

13 MR. ATLEE: Thank you.

14 THE COURT: Do I have a proposed form of
15 order that everyone can agree on? Why don't you --
16 Why don't you -- I sign orders, seriously, with
17 lightning speed.

18 MR. ATLEE: We'll get it to you today.

19 THE COURT: So, it's not an issue for me.

20 MR. KELLY: Your Honor, we will work with
21 the counsel before I leave today, and we'll get an
22 order.

23 THE COURT: All I need is a representation
24 that the -- Mr. Kelly, Mr. McConnell and Mr. Atlee,
25 all I need is, you can just send an email to my

1 Courtroom Deputy, Ms. Lopez, that says you agree to
2 the -- to the form of the order. I don't necessarily
3 need your signatures, but a representation either from
4 you, Mr. Atlee, or Mr. Rawlins, that the other parties
5 agree. Those orders will get signed today.

6 MR. ATLEE: Thank you.

7 THE COURT: All right. So, that's what I'm
8 going to do.

9 Mr. Ross, let me make this clear. I'm not making
10 any findings, but you've got two very good lawyers
11 over here. I don't need to tell you that. I expect
12 everything to be done by the book, in the interim.
13 So, I expect that to be done.

14 So, the motion to continue is granted. The Court
15 is going to transfer venue. And you all -- The judge
16 in California, I'm sorry, the judge's name out there?

17 MR. ATLEE: Zurzolo.

18 THE COURT: Zurzolo. Judge Zurzolo will
19 deal with the issue about whether or not to appoint a
20 trustee. I don't make any finding as to whether or
21 not a trustee should be appointed.

22 Okay. Anything else that we need to be -- that
23 we need to deal with right now, counsel?

24 MR. ATLEE: I don't believe so.

25 THE COURT: All right. Let us know that the

1 form of order's acceptable, upload it, and it will get
2 signed today. All right?

3 MR. ATLEE: Thank you.

4 MR. KELLY: I've just approved it, your
5 Honor.

6 THE COURT: You have?

7 MR. KELLY: Subject to the U.S. Trustee
8 (inaudible).

9 THE COURT: All right. Let's let --

10 MS. WENGER: We have (inaudible).

11 THE COURT: All right. Fair enough, then.
12 What'll happen is, I'll sign it today.

13 MR. KELLY: Do you want me to just hand it
14 to the courtroom staff, your Honor?

15 THE COURT: Yes, you may.

16 All right. We'll be in recess till 1:30.

17 MR. KELLY: Thank you, your Honor.

18 (Recess.)

19 *****

20
21 I, Court approved transcriber, certify that the
22 foregoing is a correct transcript from the official
23 electronic sound recording of the proceedings in the
24 above-entitled matter.

25 /s/ Rosemary Flores

Signature of Approved Transcriber

November 9, 2010

Date

Rosemary Flores

Typed or Printed Name